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2. Code 1887, secs. 1032, 1033 (the latter section is amended by Acts 1893-94, p. 664, c. 599), conferring jurisdiction on justices of the peace in terms applies only to "towns," and is therefore not made to apply to the city of Buena Vista by the city's charter, sec. 49 (Acts 1893-94, pp. 113, 114, c. 114) of which declares that the justices of the peace therein shall exercise the same jurisdiction as is prescribed by the general laws of the state with reference to the justices of "cities and towns."

3. Where a city has been chartered as such by the legislature, its status as a city is not subject to collateral attack.

4. The Buena Vista city charter (Acts 1891-92, p. 366, c. 225, sec. 7) provides that the mayor shall possess all jurisdiction in criminal cases of justices of the peace of the city, who are declared to be conservators of the peace within the limits of the corporation, and sec. 49 (page 380), as amended by Acts 1893-94, pp. 113, 114, c. 114, declares that such justices shall have the same jurisdiction as is prescribed by the general laws of the state with reference to justices of "cities and towns." *Held*, that under Code 1887, sec. 4106, as amended by Acts 1899-1900, p. 838, c. 781, limiting the power of justices to try misdemeanors to such as occur within their jurisdiction, the mayor of such city had no jurisdiction to try a defendant for selling liquors in violation of Acts 1897-98, p. 401, c. 353, prohibiting such sale within two miles of the corporate limits of a city.

HOGE v. FIDELITY LOAN & TRUST CO.

Sept. 15, 1904.

[48 S. E. 494.]

ACTIONS—DEFENSES—ESTOPPEL IN PAIS—EQUITY—JURISDICTION—JUDGMENTS—INJUNCTION.

1. The defense of equitable estoppel is as available at law as in equity.

2. Where complainant had a defense of estoppel *in pais* to a debt sued on, but under advice neglected to make defense to the suit at law and permitted judgment to be recovered against her by default, she was not thereafter entitled to maintain a suit to enjoin the collection of such judgment on the ground of such estoppel, since, the jurisdiction of equity as to such defense being concurrent with the court of law, complainant waived her defense by failing to set up the same in the law action, that court having first acquired jurisdiction.

PRICE v. MARKS.

Sept. 15, 1904.

[48 S. E. 499.]

ASSUMPSIT—PLEADING VERIFIED ACCOUNT—AFFIDAVITS—UNVERIFIED PLEAS—JUDGMENT ON PLEADINGS—WAIVER—MISPRISION OF CLERK—TAKING DEPOSITIONS.

1. Code 1887, sec. 3286, provides that, where plaintiff in assumpsit files with the declaration an affidavit that the amount claimed is justly due and

the time from which interest is claimed, no plea in bar shall be received unless accompanied by an affidavit, and that, if such plea and affidavit be not filed by the defendant, judgment shall be for plaintiff for the amount claimed in the affidavit filed with the declaration. *Held*, that where plaintiff filed a declaration in assumpsit accompanied by an affidavit, as required by such section, and on the first day of the succeeding term, defendant filed two pleas, neither of which was verified, and the case was continued, it was error for the court at the succeeding term to deny plaintiff's motion to strike out the pleas and to enter judgment for plaintiff for the amount stated in his affidavit, plaintiff not having waived his rights under the statute.

2. Where plaintiff in assumpsit filed an affidavit with his declaration, as authorized by Code 1887, sec. 3286, the misprision of the clerk in placing the cause on the issue docket for a writ of inquiry on defendant filing pleas unaccompanied by affidavit did not constitute a waiver of plaintiff's right to judgment on his affidavit for the amount of the account sued on.

3. The mere taking of depositions before a case had been set for hearing did not constitute a waiver of plaintiff's right to judgment on the pleadings by reason of the fact that the pleas filed were defective for want of an affidavit required by Code 1887, sec. 3286, an affidavit having been filed with the declaration.

TEAWALT v. RAMEY'S EX'X et al.

Sept. 22, 1904.

[48 S. E. 505.]

DECEDENT'S ESTATES—CLAIM FOR NURSING—VALIDITY—ACCOUNTING—
FINDING.

1. Where, in a proceeding to establish a claim against a decedent's estate, it appeared that accounts between claimant and decedent extended through a period of many years, and comprised numerous items and transactions; that no regular books were kept; that the making of a satisfactory statement was exceedingly difficult; and that the evidence in relation thereto was contradictory—such facts, of themselves, do not warrant a finding that no decree can be rendered in favor of either party.

2. Where claimant, who long had been intimately associated with decedent, at one time being in his employment as a laborer, and then as renter of his land for many years, in the last sickness of deceased went to his house unasked and unsolicited, even though gratefully received, as his friendship with deceased warranted, and entered the sick chamber to nurse deceased as a friend, while deceased was surrounded by his family and other friends who were anxious to serve him, and no stipulation was made that the service of claimant should be paid for, no promise will be implied.